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10/697,788	10/30/2003	Michael J. Bullinger	10226.10US11	1146

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/697,788
Filing Date: October 30, 2003
Appellant(s): BULLINGER, MICHAEL J.

Gregory A. Sebald
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/15/2011 appealing from the Office action mailed 10/15/2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

The appeal brief of 5/30/2007 and the appeal brief filed 9/17/2009.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 8-25, 28-29 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN

REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6732477	***Richard***	***5-2004***
5845435	***Knudson***	***12-1998***
5729931	***Wade***	***3-1998***
4263756	***Middleby***	***4-1981***

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 11, 13-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Knudson (5845435).

Per claims 8, 11, 13-16, Knudson (figures 10-11) shows a seamless gutter and cover system comprising a gutter (96, seamless as it is made of one piece) formed from a first coil of

material having a front face(97), a bottom and a rear portion (98) extending upward to a top segment, a cover (99) formed from a second coil of material, the cover extends over the gutter and has a debris separation portion (106) extending above the front face of the gutter, a lip portion (99a) extending upward and wrapping over the top segment (98a) of the gutter, the lip portion and the top segment of the gutter are continuously pressed, and fixed together along their entire length to form an integral gutter and cover assembly (the part 99a appears to press fit over part 98a and together forming an integral part), the gutter is made of a first material and the cover is made of a second material, the gutter and cover are permanently integrally connected together(unless someone uses forces to separate them, the gutter and cover are permanently integrally connected), mounting means for securing the system to the edge of the roof, the mounting means further comprising mounting hardware(75) for securing the system to the edge of the roof, the mounting hardware extends through a hole in the gutter and cover system (the system including part 131), the mounting means is repeatedly positioned at determined distances along the gutter and cover system (figure 9).

Per claims 17-21, Knudson (figures 10-11) shows a gutter and cover system comprising a gutter (96) formed from a first coil of material having a front face(97), a bottom and a rear portion (98) extending upward to a top segment, a cover system (99) formed from a second coil of material, the cover extends over the gutter and has a debris separation portion (106) extending above the front face of the gutter, a lip portion (99a) extending upward and wrapping over the top segment of the gutter, the lip portion and the top segment of the gutter are pressed and fixed together along their length to form an integral gutter and cover assembly (the part 99a appears to press fit over part 98a and together forming an integral part), an internal support member (131)

for reinforcing the gutter and the cover, the internal support member further comprising a debris separation support segment (108) juxtaposed to an underside of the debris separation portion of the cover and having a profile with an upper edge matching the debris separation portion of the cover (the curve of the support matches the curve of the cover), a rear portion (141) extending downward to a front face segment, fixation means (75) for securing the internal support member with respect to the gutter and cover system, the fixation means further comprising mounting hardware for securing the internal support member to the gutter and cover system, the mounting hardware (75) extends through a hole in the gutter and into a hole in the debris separation support segment (148), the internal support member is repeatedly positioned at determined distances along the gutter and cover system, the front face defines a continuously curved profile.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Middleby (4263756).

Knudson shows a seamless gutter and cover system comprising a gutter formed from a first coil of material having a front face, a bottom and a rear portion extending upward to a top segment (98a), a cover (99) formed from a second coil of material, wherein the cover extends over the gutter and has a debris separation portion extending above the front face of the gutter, and a lip portion (99a) extending upward and wrapping over the top segment of the gutter, the

top segment and the lip portion interlock, the part (99a) is continuously pressed against the part (98a) along their entire length.

Knudson does not show the top segment of the gutter and the flange/lip portion of the cover are continuously crimped together to interlock the top segment with the flange/lip portion.

Middleby discloses crimping of a panel edge (12) with a gutter recess (16) to assemble the structures together (col 1 lines 60-64), the entire edge being located within the recess (16) and crimped together.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's structure to show the top segment of the gutter and the flange/lip portion of the cover are crimped together to interlock the top segment with the flange/lip portion because crimping two attached structures together would enable the secured fastening of the structures together as taught by Middleby, and one having ordinary skill in the art would have found it obvious continuously crimp Knudson's modified structure as it provides enhanced secured attachment of the cover to the gutter along the attachment edge.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Wade and Richard ((6732477).

Knudson shows all the claimed limitations except for the first material comprising aluminum and the second material comprising copper.

Wade discloses a cover (10) made of copper (col 2 lines 1-4).

Richard discloses a gutter of aluminum.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's structure to show the first material comprising aluminum as

taught by Richard and the second material made of copper as taught by Wade because it is well known in the art to form gutters out of aluminum as it provides for rust resistance and light weight, and having the cover made of copper as taught by Wade, would have been obvious to one having ordinary skill in the art as copper provides for strong light weight support while being rust resistance also.

6. Claims 9, 22, 24, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Beam (4604837).

Knudson shows all the claimed limitations including an internal support member (131) having a pooling segment profile (147) juxtaposed to an underside of the section of the cover, a rear portion (141) extending downward to a front face segment (134) except for the cover comprising a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of the cover.

Beam (figures 2-6) discloses a kinetic energy dispersion section (110, 140, 10, 48) intermediate the rear portion of the gutter and the debris separation portion of the cover to enable the slowing of rain water so that rain water would properly drain into the gutter, the dispersion sections being concave.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's structure to show the cover comprising a kinetic energy dispersion section intermediate the rear portion of the gutter and the debris separation portion of the cover as taught by Beam because it would allow for the slowing of rain water so that rain water would properly drain into the gutter.

Per claims 22, 24, 28-29 Knudson as modified shows a concave pooling portion intermediate the rear portion of the gutter and the curving front portion of the cover.

7. Claims 23, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson (5845435) in view of Beam (4604837).

Knudson as modified shows all the claimed limitations except for the gutter front face defining a K-style or square profile.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Knudson's modified structure to show the gutter front face defining a K-style or square profile because it would have been an obvious matter of engineering design choice to have the face being K-style or square profile since applicant has not disclosed that the different profiles solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the front face being continuously curved.

(10) Response to Argument

With respect to claim 8, examiner points out that the claim only requires the "gutter are continuously pressed and fixed together", not crimped together. Knudson in figures (10-11) shows a gutter having a rear portion (98), and a cover having a portion (99a) continuously pressed and fixed together. The reference thus shows the claimed structures.

With respect to the limitation of crimping in claims 10, reference Knudson as modified by Middleby shows the cover being crimped to the top segment of the rear side of the gutter. The combination thus shows the claimed limitations. As pointed out to applicant on 10/15/2010, modifying Knudson with Middleby to show crimping would enable the secured fastening of the structures together. The combination thus would prevent the situation where the parts are

accidentally separated. Also, crimping the parts together still allows a person to remove the cover if desired. The crimping only makes the attachment of the parts together stronger. The crimped parts are still removable from each other if desired. The combination also does not prevent Knudson's teaching of figure 11 from functioning as claimed. The arguments are thus not persuasive.

Since applicant's arguments to Knudson are not persuasive, other arguments based on the arguments to Knudson are also not persuasive.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Phi D A/

Primary Examiner, Art Unit 3633

Conferees:

/BRIAN GLESSNER/

Supervisory Patent Examiner, Art Unit 3633

Marc Jimenez /MJ/